APPENDIX

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION No. 3-63

JANAF, INC., *Plaintiff*

v.

VICTOR J. ORSINGER, *Defendant*

Opposition to Defendant's Motion for Summary Judgment

Comes now the plaintiff, by counsel and opposes the defendant's Motion for Summary Judgment filed pursuant to Rule 56 of the Federal Rules of Civil Procedure and as grounds therefor states that there are genuine issues of fact with an issue by the pleadings, which have never been adjudicated by the United States District Court for the District of Columbia.

Grounds of this Motion are set forth more fully in the Affidavit of the plaintiff hereunto annexed.

s/s _____
Mark B. Sandground
944 Washington Building
Washington, D. C.
Attorney for Plaintiff

(Certificate of Service)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Washington 1, D. C.

Chambers of
Matthew F. McGuire
Chief Judge

April 8, 1964

Memorandum to the Clerk

In re: Janaf, Inc. v. Victor J. Orsinger, C.A. 3-63

This matter has been pending since January 2, 1963, when the complaint alleging fraud was filed.

On September 13, 1963, after various interlocutory matters had been disposed of it was dismissed for failure to comply with the Federal Rules of Civil Procedure.

On October 31, 1963, a motion to dismiss an amended complaint was argued and granted but the plaintiff was given fourteen days to serve a second amended complaint. This by Judge McGarraghy.

On January 10, 1964, motion for leave to withdraw as counsel for plaintiff was granted.

On March 4, 1964, hearing on motion for summary judgment was continued until April 7 to allow plaintiff opportunity to obtain counsel. No further continuances to be allowed on the motion. This by Judge Sirica.

On April 7, 1964 the motion was called before Judge Jones who entered a personal disqualification. Plaintiff at this time was still without counsel.

It is therefore ordered that plaintiff is given ten days from this date to obtain counsel, in default of which the

motion for summary judgment is granted and the cause dismissed with prejudice. Order accordingly.

MATTHEW F. McGUIRE
Chief Judge

CC—Mr. James K. Beazley
7313 Hogarth Street
Springfield, Virginia

Joseph G. Dooley, Esq.,
1604 K Street, N. W.
Washington, D. C.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Washington 1, D. C.

Chambers of
Matthew F. McGuire
Chief Judge

April 9, 1964

Memorandum to the Clerk

In re: Janaf, Inc. v. *Victor J. Orsinger, C.A. 3-63*

As of April 8, 1964, a memorandum was addressed to the Clerk of the Court giving plaintiff ten days from that date to obtain counsel, in default of which motion for summary judgment filed by the defendant would be granted and the cause dismissed with prejudice.

As of this date the Court has received a communication, together with data attached, suggesting that "the Court permit adequate time for the Janaf shareholders to contribute the funds necessary to pursue their common cause as may be determined by their own desires in the matter" signed by the President of the plaintiff corporation, James K. Beazley.

In light of these circumstances, therefore, the order above referred to in memorandum form is vacated and it is directed the parties be advised the matter re application for extension of time is to be set down for hearing in the Motions Court.

MATTHEW F. McGUIRE
Chief Judge

CC—Mr. James K. Beazley,
P. O. Box 48,
Annandale, Virginia

Joseph C. Dooley, Esq.,
1604 K Street, N. W.
Washington, D. C.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,813

JANAF, INCORPORATED, *Appellant*

v.

VICTOR J. ORSINGER, *Appellee*

Motion to Dismiss Appeal

Comes now the Appellee and moves this Court for an Order to dismiss the above-captioned Appeal for failure of the Appellant to print designated material in the Joint Appendix.

The grounds of this Motion are more particularly stated in the Affidavit of Joseph G. Dooley, hereunto annexed.

JOSEPH G. DOOLEY
Attorney for Appellee
1604 K Street, N. W.
Washington 6, D. C.

Affidavit in Support of Appellee's Motion to Dismiss Appeal

Joseph G. Dooley, being first duly sworn, deposes and says:

I am the attorney for the Appellee in the above-captioned Appeal and I make this Affidavit in support of the Motion to Dismiss the above-captioned Appeal for failure of the Appellant to print in the Joint Appendix the material designated and counter-designated by the parties hereto for inclusion in the Joint Appendix.

On August 16, 1964, the Appellant filed a Designation of Portions of the Record for Inclusion in the Joint Appendix. A copy of said Designation is annexed hereto as Exhibit "A". Pursuant to Rule 16 (b) of the Rules of this Court, the Appellee served and filed a counter-Designation, a copy of which is annexed hereto as Exhibit "B".

As appears from the Designation and Counter-Designation, the Appellee listed for printing about one-half as many items as the Appellant. Bulkwise, by comparison, the material designated by the Appellee was negligible. The inclusion, however, of the material designated by both parties is essential for the purpose of testing the correctness of the result in the District Court and I intended to make reference to all such material in my Brief.

On October 7, 1964, the Appellant served a Brief and Joint Appendix. The Joint Appendix contained five items, (a) the Docket entries, (b) an Order of April 11, 1964, which anteceded the Order appealed from, (c) the tran-

script of proceedings before the District Judge, (d) the Order from which the Appeal was taken and (e) the Notice of Appeal.

I contacted Appellant's attorney by telephone for the purpose of determining whether the omissions now complained of represented oversight or a deliberate departure from the material designated by the parties. Appellant's counsel of record advised that an associate prepared the Brief and that he was unable to state the reason for the omissions. He added that he would look into the matter and advise me of his findings and would take corrective action but I had no word from him in the 24 hours since our telephone conversation. Parenthetically, I can add that the printer informed me in telephone conversation that the material printed in the Joint Appendix represented all material delivered to him for printing.

Appellee submits that this Court would unquestionably desire to rest its decision upon consideration of all relevant facts, and not merely on facts submitted in the Joint Appendix which has been filed. The existing Appendix is insufficient for the purpose. In view, therefore, of the Appellant's failure to furnish the facts and failure to print the material it represented it would print, the Appeal is dismissable.

WHEREFORE, it is respectfully requested that an Order be made dismissing the Appeal herein.

JOSEPH G. DOOLEY
Attorney for Appellee
1604 K Street, N. W.
Washington, D. C.

Affidavit in Opposition for Leave to File, Time to File Having Expired

Joseph G. Dooley, being first duly sworn, deposes and says:

I am the attorney for the Appellee in the above captioned appeal and I make this affidavit in opposition to the Appellant's Motion For Leave To File Opposition To The Appellee's Motion To Dismiss, The Appellant's Time To File Having Expired.

On October 13, 1964, the Appellee moved to dismiss the appeal for the Appellant's failure to print, in the Joint Appendix, the great bulk of the material the Appellant itself had designated for inclusion and for failure to print the major portion of the material counter-designated by the Appellee. The Appellant did not respond to the motion within the time provided for by the Rules of this Court. When it attempted to lodge its papers in opposition, on or about October 27, 1964, it was informed that it would first have to move for leave to file because its time to do so had expired. I understand that such a motion was filed on October 30, 1964, but, to the date of this affidavit, I have not received a copy of such motion.

Meanwhile, on October 30, 1964, when I received the Appellant's papers in opposition to the Appellee's motion to dismiss, I immediately prepared an affidavit in reply to the Appellant's papers in opposition as I had found significant misstatements of fact in them. The Clerk of the Court suggested that I withhold my reply affidavit pending a disposition of the current motion. Though there has been no receipt of a copy of the Appellant's motion for leave to file, this affidavit is submitted in opposition, with the request that my reply affidavit of October 30, 1964, be considered conjunctively to the end that there be full disposition of all pending motions. Additionally, I have tentative travel commitments and I wish to guard against any default on my part.

It is respectfully submitted that the Appellant's motion for leave to file in opposition to the motion to dismiss should not be granted. This is the third time that the Appellant has failed to comply with the Rules of this Court governing appeals.

On or about August 10, 1964, counsel for the Appellant filed a Statement of Points And Designation of Parts of The Records proposed to be printed in the Joint-Appendix. I did not receive copies of the Statement and Designation and, on August 12, 1964, I wrote a letter to counsel for the Appellant, pointed out the omission and requested that it be corrected. By August 18, 1964, I had not received the Statement and Designation and I moved for an order dismissing the appeal or, alternatively, extending the time to serve and file a counter-designation. On August 24, 1964, counsel served a copy of the Appellant's Designation and Statement of Points and, for that reason, I moved this Court, on August 25, 1964, for leave to withdraw that portion of the earlier motion to dismiss, after an agreement with counsel that my time to counter-designate would be extended to September 4, 1964.

The second failure to comply centered around the failure to file a proper Joint-Appendix. Such failure precipitated the motion to dismiss after counsel for the Appellant had failed to respond to a telephone call. The third occasion of default was the default in filing opposition to the motion to dismiss.

Should the Court consider it appropriate to entertain the motion for leave to file, it is respectfully requested that the Court also consider the reply affidavit in support of the basic motion to dismiss and grant said motion for the reasons stated in said Affidavit.

JOSEPH G. DOOLEY
Attorney for Appellee
1604 K Street, N. W.
Washington, D. C.

Rules of United States Court of Appeals for the District of Columbia Circuit

Rule 16 (a) Record to be Printed in Joint Appendix Complete Record Not to be Printed; Joint Appendix to Briefs. The complete record on appeal shall not be printed. Instead the parties shall print as a joint appendix to the briefs (either as an attachment to appellant's brief or as a separate document) the portions of the record which both sides desire the court to read in order to decide the questions presented. Appellant shall print in the joint appendix the relevant docket entries in the district court arranged chronologically in a single column, the complaint and those portions of the pleadings which are relevant to the issues in the case, the judgment or order appealed from and the notice of appeal, together with any findings of fact, conclusions of law, opinion, or charge of the court, and such other parts of the record material to the points on appeal as the appellant desires the court to read in order to decide the questions presented. If appellant contends that the judgment or order is not supported by the evidence, he shall print all material portions of the testimony and evidence. There shall also be printed in the joint appendix such other parts of the record as appellee deems essential for the court to read in order to decide the questions presented. Appellant shall print in the joint appendix the parts of the record which both parties desire printed, but if appellant considers that any parts of the record which appellee desires to print are not material to the questions presented and so notifies the appellee in writing, suitably identifying the parts, the appellee, if he wishes any of those parts printed, shall promptly arrange with appellant's printer for printing them in the joint appendix.

Rule 16 (b) Statements of Appellant and Appellee as to Contents of Joint Appendix. Within 10 days after the filing of the record appellant shall serve and file with the clerk a statement of the parts of the record he proposes to print in the joint appendix. Within 10 days after the filing of appellant's statement, appellee shall serve and file a statement of the parts of the record not included in appellant's statement which appellee desires to have printed in the joint appendix.

Rule 16 (g) Matter Inadvertently Omitted May be Added. If anything material to the appeal is inadvertently omitted from the joint appendix, the clerk on the written request of any party duly served and filed prior to the expiration of the time for filing the reply brief may allow the joint appendix to be released to the printer for the purpose of adding such matter thereto. The request shall suitably describe the additional matter to be printed.

Rule of United States District Court for the District of Columbia

Rule 9. Motions

(b) Points and Authorities; entry of motion, etc.; failure to file opposing points and authorities; oral hearings. With each motion there shall be filed and served a separate paper stating the specific points of law and authorities to support the motion, including a concise statement of material facts. Such statement shall be additional to a statement of grounds in the motion itself, and shall be entered on the docket but shall not be a part of the record. The moving party shall enter the motion and the fact of filing the statement on a card provided by the Clerk. A statement of opposing points and authorities shall be similarly filed, noted and served within five days or such fur-

ther time as the Court may grant. If not filed within the prescribed time the Court may treat the motion as conceded. If a statement in opposition is filed the motion shall be treated as submitted unless an oral hearing is granted by the Judge or Pretrial Examiner.

Section 1257, U. S. C.

§ 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.